

# General Terms and Conditions for Works and Services

As at: 12/24



## 1. General

**1.1** The subject of these General Terms and Conditions of Purchase for Works and Services ("GTC") are the general contractual terms and conditions applicable between FERCHAU GmbH ("Client") and the Supplier when the Client commissions in particular services (*Dienstleistungen*) and works and services (*Werkleistungen*) from the Supplier in the area of planning, documentation, development and design tasks. These GTC shall apply to all contracts between the Client and the Supplier, unless expressly agreed otherwise.

**1.2** These GTC of the Client shall apply exclusively. The Supplier's general terms and conditions shall not apply even if they are used or referred to on documents and order confirmations. The Supplier's general terms and conditions shall only be recognised if the Client has previously expressly agreed to their validity in writing.

## 2. Offers

Offers and cost estimates shall be submitted by the Supplier in a binding manner and free of charge for the Client. Quotations and cost estimates of the Supplier shall be drawn up in German and/or English at the discretion of the Client and shall be binding for the Supplier for 12 weeks from the date of the quotation, unless otherwise agreed in writing.

## 3. Order/conclusion of contract

**3.1** A binding offer vis-à-vis the Supplier shall only be created when the order is placed by the Client. The order can be placed by the Client in text form (*Textform*). The Supplier is obliged to check the order of the Client immediately after receipt and to either accept or reject it within 3 working days.

**3.2** The binding contract ("Work Order") shall be concluded when the Client receives the order of the Client signed by the Supplier pursuant to clause 32 (written form) within the deadline. Until receipt of the Supplier's acceptance declaration, the Client may freely revoke his declaration.

**3.3** No rights can be derived against the Client from oral or telephone orders, information, promises, etc. of the Client, unless they have been confirmed in writing by the Client or the Client has demonstrably waived the written form requirement.

## 4. Delivery and performance dates

The delivery and performance dates and periods stated in the Work Order or otherwise agreed shall be binding on the Supplier and shall be calculated from the date of the order. The place of performance and success of the service as well as the place of acceptance of the delivery shall be at the destination specified in the Work Order or at the place of the commissioning branch office of the Client, unless otherwise agreed.

## 5. Execution of the respective Work Order

**5.1** The Supplier shall perform its services in its own name and for its own account as an independent contractor. The Supplier shall not be authorised to represent the Client in legal transactions or to collect payments on the Client's behalf.

**5.2** The Client shall provide the technical, company-specific and other information and guidelines required for the execution of the Work Order. The Supplier shall bear the responsibility for the execution and success of the Work Order.

**5.3** Instruction, guidance and supervision of its vicarious agents shall be the exclusive responsibility of the Supplier, even if the order is carried out at the premises of the Client or any third party. This shall not affect the right of the Client to issue order-related instructions concerning the work result.

**5.4** The progress of performance shall be confirmed by the Client by signing the project progress reports or activity reports submitted to him. In case of contracts for works and services an acceptance report (*Abnahme*) has to be signed by the Client and the Supplier for work performances after completion of the Work Order (likewise for self-contained partial performances). In the case of contracts for services, the progress of performance shall be confirmed by signing the activity reports/project progress reports submitted to the Client by the Supplier.

**5.5** The Supplier shall ensure that the Client or the contact persons designated by the Client are kept informed on an ongoing basis by reporting at regular intervals or upon request on the status of the performance of the Work Order.

## 6. Term; Termination

**6.1** If the Work Order is a contract for services (*Dienstvertrag*), the term of the Work Order shall commence with the conclusion of the contract or, if applicable, the different start of the order specified in the Work Order. The Work Order can be terminated by the Client at any time in accordance with the deadlines according to Sec 621 BGB (German Civil Code) or by the Supplier with a notice period of 15 days to the end of the month, but not by the Supplier before the end of the project as forecasted in the Work Order.

**6.2** If the Work Order is a contract for work and services (*Werkvertrag*) (in particular conceptual services, individual software developments, installation services, adaptations and parameterisation of software), the Client may terminate this at any time until completion of the work.

**6.3** The right to terminate without notice for good cause remains unaffected.

**6.4** The termination must be in writing, which is also complied with by electronic transmission of a signed and scanned letter of termination.

**6.5** The Supplier shall – at the discretion of the Client – return or delete without delay and without being requested to do so the working and business documents as well as other working materials provided to it after termination of the Work Order. The assertion of a right of retention on these is excluded.

## 7. Delay in delivery and performance

**7.1** If delays in delivery or performance occur, the Supplier shall immediately report the reasons and duration thereof in writing to the relevant branch office/department of the Client. Irrespective of this, the Client shall be entitled to claim a contractual penalty of 0.2% – but not more than a total of 5% – of the value of the agreed delivery for each working day of delay. This shall also apply if the Client is entitled to withdraw from the contract. The Client reserves the right to assert such a contractual penalty until the time of full payment. The statutory claims in such a case shall remain unaffected.

**7.2** The Supplier may only invoke the failure on the part of the Client to perform necessary and contractually agreed duties to cooperate if these are not performed within a reasonable period set by the Supplier despite a request in text form.

**7.3** The Client shall be entitled to offset a corresponding contractual penalty against claims of the Supplier.

**7.4** Insofar as the subject matter of the Work Order are work products/deliverables, it shall also apply that the necessary delivery documents are to be enclosed with each delivery. In the event of incomplete or incorrect shipping documents or shipping documents received late, the Supplier shall bear the additional expenses resulting therefrom and compensate the Client for any damages arising therefrom. Deliveries shall be made including proper packaging free delivery address. If the Supplier has undertaken the installation or assembly of the delivery item, the Supplier shall bear all necessary ancillary costs such as travel expenses, provision of tools, etc., subject to deviating regulations.

## 8. Exemption from acceptance

If the Client is prevented from accepting the delivery item or service due to industrial disputes or force majeure, the Client shall be released from the obligation to accept the delivery item or service in good time for this period.

## 9. Suspension

The Client may at any time suspend the further execution of a Work Order or parts of a Work Order by written notice to the Supplier. Upon receipt of such notice, the Supplier shall (i) cease work on the ordered services and (ii) refrain from placing any further orders with third parties in respect of the ordered services.

The Supplier may demand compensation for the additional costs incurred as a result, which shall be reasonable and verifiable, and which must be notified in advance and approved by the Client.

## 10. Passing of risk

In the case of sale by delivery to a place other than the place of performance, the risk of loss of the delivery/service shall pass to the Client after delivery to the agreed unloading point. In the case of a contract for work and services, the risk shall remain with the Supplier until the complete acceptance of the entire performance by the Client.

## 11. Delivery quantities

Insofar as a contract for work and services is concerned, the Supplier is only permitted to deliver the quantity ordered by the Client. Deviating quantities shall only be accepted by the Client if this has been expressly agreed in writing. The Supplier undertakes to provide all necessary accompanying documents, consignment notes, supplier's declarations, inspection records and other documents in good time at its own expense. If acceptance of the delivery depends on complete documentation, the Client shall not be in default of acceptance if the relevant documents were not provided by the Supplier in good time or the Client no longer had reasonable time to examine them.

## 12. Partial deliveries

**12.1** Insofar as work performances (*Werkvertragsleistungen*) have been commissioned, the performance shall only be deemed to have been rendered by the Supplier when it has been delivered in full and free of defects. This also applies in the case of partial deliveries for a contractually agreed work performance. The Supplier shall bear the additional costs incurred by partial deliveries with regard to transport, packaging, etc. The Client shall be entitled to set off the costs against the costs of partial deliveries. The Client is entitled to offset any additional costs against the Supplier's claims. The partial deliveries are not to be assessed as a self-contained transaction.

**12.2** All claims of the Client with regard to a contractually agreed performance shall not be affected by partial deliveries, in particular not with regard to liability for material defects. Unless expressly agreed otherwise, the Supplier shall owe the overall functionality of the work product/deliverables owed. In the case of call-off orders, the Supplier is obliged to provide all call-off quantities in such a way that he can meet the delivery date as a fixed date.

### **13. Quality**

If certain quality or grade classes have been agreed with regard to the performance of the work and/or service, they shall be deemed to be the agreed quality.

### **14. Prices**

**14.1** The prices can be agreed as a binding fixed price, as a target price, according to hourly expenditure or measurement. They shall always be subject to the statutory value added tax. Orders shall be invoiced according to the progress of performance in instalments to be agreed separately. The Supplier shall be responsible for the payment of tax on its income and shall reimburse the Client for any wage tax paid by it and shall indemnify the Client against any wage tax liability.

**14.2** Unless otherwise agreed in writing, prices are understood to be delivery duty paid (DDP in accordance with Incoterms 2000), including packaging, plus the value added tax applicable at the time.

**14.3** Costs for quotations, samples, test prints, specimens and similar preliminary work can only be charged if this is agreed in writing.

### **15. Confirmations of orders, invoices and credit note procedures**

**15.1** Order confirmations shall be sent to the Client by separate post (scan by e-mail is sufficient); they may not be enclosed with the goods. Delivery notes must be enclosed with the goods. In addition to the exact designation of the scope of delivery according to article, type and quantity, all documents must in particular state the order numbers and the ordering party. Direct deliveries to customers of the Client shall be carried out in an advertising-neutral manner as a matter of principle.

**15.2** Insofar as in the individual project contract a remuneration on a time and material basis and the use of relaX (see Section 18.1) have been agreed, settlement between the Client and the Supplier shall be carried out exclusively by means of a credit note procedure. The Supplier expressly agrees to (i) settlement by means of credit notes and (ii) the electronic transmission of settlement (including credit notes).

**15.3** The Supplier shall make a complete and accurate record of the time expenditures in relaX as evidence of its performance. This record shall be confirmed immediately by the Client's contact person and represents the basis for billing.

**15.4** Unless otherwise agreed in the order, settlement shall be based on the time expenditure reported by the supplier and after approval by the Client. The Client is obliged to issue a credit note in accordance with § 14 para. 2 sentence 2 UstG in the amount approved in accordance with section 2 immediately after the supplier has recorded the time expenditures (within normal business hours) and to send it to the supplier. The complete records of time spent and copies of receipts for reimbursable expenses (if agreed) must be submitted via relaX by 12 noon (Monday-Friday) on the 5th weekday of the following month at the latest.

**15.5** The supplier undertakes to provide the Client with all details and information required for the credit note in a timely and accurate manner. This also includes information that excludes a VAT liability in Germany, for example the applicability of the small business regulation or a place of performance abroad.

In the event of ambiguities or doubts, the supplier shall inform the Client in good time and provide all relevant information. The supplier is obliged to continuously check the correctness of the information in relaX and to ensure completeness and correctness.

**15.6** In case of technical faults, the supplier may exceptionally submit the approved records of time expenditures by e-mail. After the Client has received approved records of time expenditures, the Client shall immediately prepare a credit note for the supplier for the remuneration of the listed services, which shall be sent to the supplier as an accounting and payment document.

**15.7** The credit note procedure means that the Supplier is no longer required to send an invoice to the Client for the cases specified in this clause. The supplier shall check the credit note without delay. Any objection by the supplier to the correctness of the content of the credit note must be made within one month after receiving the credit note. If the supplier fails to complain about a credit note in due time, the credit note shall be deemed as approved, subject to subsequent corrections.

**15.8** Deviations from the aforementioned provisions shall require a written agreement between the Client and the Supplier.

**15.9** If no remuneration on a time and material basis and no use of relaX has been agreed or if it is a contract for work and services, the Supplier shall be obliged to issue an invoice in accordance with the conditions of clause 15.10:

**15.10** Invoices shall be sent to the Client exclusively in electronic form in PDF format by e-mail to the e-mail address, provided for this purpose, invoice@ferchau.com. The Supplier must ensure that its invoices meet the minimum statutory requirements (in particular in accordance with Section 14 UStG) and contain the additional information requested by the Client in the respective order. Supplier invoices that do not meet the above requirements cannot be processed until they have been completed. The Client shall notify the Supplier in each individual case. The supplier shall then immediately prepare and submit a new invoice that meets the requirements.

### **16. Terms of payment**

**16.1** The payment period shall commence upon acceptance (in the case of contracts of work) or upon complete delivery and performance (in the case of service contracts), but at not before upon receipt of a proper invoice or issue of the credit note by the Client, but not before the agreed delivery date. If no separate payment period has been agreed in text form, payment shall be made within 45 days net. Payment shall be made subject to invoice verification.

**16.2** The exercise of the retention of title is only possible with prior withdrawal from the contract.

### **17. Supplier's expenses; tools, documents and drawings**

**17.1** Insofar as the Supplier performs the agreed activities on his own premises, he shall also bear the costs incurred in each case. They shall not be remunerated separately by the Client. If the activities are carried out on the premises of the Client or third parties, the Client shall make the necessary premises or material resources available to the Supplier against payment of a fee to be agreed upon.

**17.2** The Supplier undertakes to treat tools, test equipment, documents, plans, samples, drawings, data carriers, etc. received from the Client for the purpose of executing the Work Order with the necessary care and confidentiality. He shall not acquire any right of retention whatsoever in them. He may only make them accessible to third parties for use in accordance with the Work Order. If the Client suffers damage as a result of non-compliance with this provision, the Supplier shall be obliged to pay compensation.

### **18. Use of "relaX" and other applications**

**18.1** The Supplier undertakes to use the application "relaX" made available by the Client for use within the scope of the execution of the Work Order, which is used for the legally compliant control of contracts for work and services/contracts for services, at the request of the Client within the scope of the communication with the Client and the customer of the Client. The use of relaX is subject to the terms of use, which can be accessed on the website of the Client.

**18.2** Alternatively, the use of other applications for cooperation may be required for the execution of the Work Order by customers of the Client. The Client shall reference to this in the Work Order. The Supplier undertakes to make use of such applications in such a case.

### **19. Warranty for material defects; liability**

**19.1** The Supplier represents and warrants that all deliveries comply with the Work Order and all applicable statutory provisions, in particular with regard to design, quality, colouring, accident prevention and environmental protection regulations and guidelines issued in the form applicable at the time of delivery and the state of the art.

**19.2** The warranty period for defects is 24 months, beginning with the final technical acceptance of the delivery by the Client, unless a longer warranty period is stipulated by law or contract. In the case of deliveries for which commissioning or final technical acceptance is not provided for, the warranty period shall also be 24 months, but commencing on the day of delivery. By way of derogation from this, the warranty period for material defects shall be five years in the case of a building and any work where the delivery consists in the provision of design or supervision services therefor (sec. 634 a para 2 no. 2 BGB)

**19.3** In the case of deliveries which are purchased by the Client for resale, the warranty period for material defects shall commence with the commissioning or final technical acceptance by the customer of the Client. In the case of deliveries for which no commissioning or final technical acceptance takes place, the warranty period for defects shall begin with the delivery to the customer of the Client. However, it shall end no later than 36 months after delivery to the shipping address stated in the Work Order.

**19.4** In addition, the Supplier warrants that his work fits for the use/purpose agreed or foreseeable in the Work Order or for a contract of the same type.

**19.5** In the event of defective delivery, the Client shall be entitled to optionally assert the claims to which it is entitled by law within the period of liability for defects.

**19.6** Costs resulting from defective delivery of the subject matter of the Work Order, in particular transport, travel and labour costs, shall be borne by the Supplier.

**19.7** In the event of rectification of defects to an unreasonable extent, the Client shall be entitled either to the statutory claims for material defects or to a claim for replacement delivery free of charge.

**19.8** If the Supplier does not comply with the request to remedy a defect within a reasonable period of time, the Client shall have the right to choose whether to carry out the necessary measures himself or to have them carried out by third parties. The costs for this shall be borne by the Supplier. Without prior agreement, measures to avert disproportionately large damage or to avoid risks to the operational safety of the Client or its customers may be carried out by the Client or by third parties commissioned by the Client at the expense of the Supplier. The Supplier shall be informed immediately of the cause, nature and scope of such measures. For the avoidance of doubt this shall not limit the liability for defects, therefore other claims remain unaffected.

**19.9** The warranty period for defects is suspended between the notification of the defect and its rectification or until any refusal by the Supplier to fulfil the claims for liability for defects. For parts to be replaced or repaired, it shall begin again with the restoration of the contractual, defect-free usability of the performance. The provision of the previous sentence shall not apply if the Supplier was not legally obliged to replace or rectify the defect.

**19.10** By accepting and using the performance or by approving e.g. documents and drawings, the Client does not waive the claims specified in the foregoing.

**19.11** In the absence of any agreement to the contrary, the delivery shall be deemed to have been inspected without delay if the inspection takes place within 5 working days of delivery. The obligation to give notice of defects without undue delay shall be deemed to have been fulfilled by the Client if the Supplier is notified of obvious defects within 10 working days of delivery and of hidden defects as soon as the defect is discovered.

**19.12** Liability shall be governed by the statutory provisions.

## **20. Product liability**

If a claim is made against the Client by third parties on the basis of product liability (*Produkthaftung*) caused by a defect in the work results delivered by the Supplier, the Supplier undertakes to indemnify the Client against such claims and to bear all costs and expenses incurred related thereto, including the costs of any legal action. In all other respects, the statutory provisions shall apply.

## **21. Intellectual property, rights of use and exploitation**

If know-how, works protected by copyright, inventions, designs, signs, designations, ideas, documentation, reports, data and documents ("Work Results") are created in the course of the cooperation between the parties, the following shall apply:

**21.1** The Supplier hereby irrevocably assigns to the Client the right to the industrial property right and to intellectual property rights ("IP-Rights") or to the IP-Rights in all Work Results subject to the Work Order upon their creation. The Client accepts the transfer. Insofar as declarations by the Supplier or the performance of acts in each case vis-à-vis third parties are required for the transfer of these rights, the Supplier undertakes to make the necessary and appropriate declarations and to perform acts. Insofar as a complete transfer of the IP-Rights is not possible, the Supplier shall grant the Client the exclusive, transferable, sub-licensable right of use to these Work Results, which is not limited in terms of space, time and content, including the right to comprehensive exploitation, production, processing and redesign to the exclusion of the Supplier. The remuneration agreed shall cover all claims of the Supplier in connection with the above granting of rights.

**21.2** The Supplier hereby irrevocably grants the Client the non-exclusive, transferable and sub-licensable right of use, including the right of comprehensive exploitation, production, processing and redesign, in respect of the Supplier's own IP-Rights already existing at the time of conclusion of the contract and incorporated in the Work Results, without additional remuneration. The Supplier is obliged to inform the Client in advance of any such pre-existing IP-Rights.

**21.3** If the Supplier uses employees or third parties to create Work Results, it must ensure that it is granted the IP-Rights to their work results to the extent specified above.

**21.4** The Supplier is only entitled to use open source software with the written consent of the Client (e-mail is sufficient).

**21.5** The Supplier shall immediately inform the Client in writing about the creation of Work Results.

**21.6** The Supplier shall be obliged to immediately hand over to the Client, upon request and without being asked to do so upon termination of the contract /Work Order, the then current status of all documents and information on the Work Results in a format that can be evaluated by the Client. These documents and information shall include in particular the entire documentation, all design drawings, plans and other technical documents relating to the Work Results.

**21.7** The Supplier shall not register industrial property rights to Work Results without the written consent of the Client.

**21.8** The Supplier shall ensure that third parties cannot assert any industrial property rights (e.g. patents, utility models, trademarks, designs), copyrights and related property rights or other rights against the Client or its Clients with regard to the contractual services or Work Results to which the Client is entitled under this Clause.

**21.9** Insofar as the Client is held liable by third parties for the infringement of IP-Rights or rights of use in connection with the contractual services or Work Results to which the Client is entitled under this section 21, the Supplier shall indemnify and hold harmless the Client from any such claims upon first request.

**21.10** In the case of any employee inventions or suggestions for improvement (*Arbeitnehmererfindungen*) made by employees of the Supplier during the execution of the individual Work Orders, the Supplier shall be obliged, at the request of the Client, to make unrestricted or restricted use of the invention and to transfer the resulting rights to the Client concurrently. Section 21.2 last sentence applies accordingly. The Supplier further undertakes not to make use of its option to release the invention pursuant to Section 6 para 2 ArbNErfG (*Arbeitnehmererfindungsgesetz*). The ArbNErfG shall apply accordingly.

## **22. Insurance**

The Supplier shall insure its liability risk by taking out liability insurance covering personal injury, property damage and financial loss in an appropriate amount and shall maintain such insurance at least until the end of all obligations arising from the contractual relationship between the parties. Upon request, the Supplier shall immediately provide evidence of such insurance to the Client.

## **23. Relationship of the Supplier to third parties**

The Supplier shall also be entitled to work for other customers. The prior consent of the Client is not required for this.

## **24. Subcontracting**

The Supplier is entitled to use third parties (e.g. subcontractors) for the performance of its own services after written approval (e-mail sufficient) by the Client, which may not be unreasonably withheld. The Supplier shall ask for approval for the use of third parties in good time in advance.

## **25. Obligation to provide information**

The Supplier is obliged to inform the Client without delay if he (i) does not employ any employees subject to compulsory insurance in connection with his activities other than family members, or (ii) if he regularly and essentially only provides services to the Client and does not appear on the market due to entrepreneurial activities including the associated opportunities and risks or (iii) if changes occur to the information provided by him in his supplier self-disclosure form.

## **26. Minimum wage**

**26.1** The Supplier represents and warrants to the Client that it will comply with the provisions of the German Minimum Wage Act (*Mindestlohngesetz* (MiLoG)) with respect to its own employees.

**26.2** This includes in particular the obligation to pay the minimum wage in the respective statutory amount and the required documentation obligations to the personnel employed within the framework of the contractual relationships with the Client as of 01.01.2015. Furthermore, the Supplier undertakes not to circumvent the statutory minimum wage provisions.

**26.3** The aforementioned obligation of the Supplier to comply with the provisions of the MiLoG – as amended from time to time – also extends to the personnel deployed by its subcontractors and in turn their subcontractors.

**26.4** The Supplier is obliged to notify the Client of the use of subcontractors. The same applies to any corresponding subcontracting by such subcontractors, if any. The Supplier undertakes to also impose the conditions and obligations contained in this provision on the subcontractors and other vicarious agents engaged by the Supplier and to work towards their compliance.

**26.5** The Supplier shall prove to the Client without undue delay after the latter's request, by submitting appropriate documents, that it and, if applicable, the subcontractors commissioned – as well as their subcontractors – fulfil or have fulfilled their obligations towards their employees.

**26.6** The Client shall also have the right to inspect the (pseudonymised) salary and wage lists of the employees deployed by the Supplier and, if applicable, its subcontractors – as well as their subcontractors.

**26.7** If the Supplier and/or a subcontractor commissioned by the Supplier or the subcontractor fails to comply with any of the provisions above, the Client shall be entitled to terminate without notice either individual or all contractual relationships existing between the Supplier and the Client.

**26.8** The Supplier hereby assumes the full guarantee for compliance with the obligations arising from the MiLoG.

**26.9** The Supplier shall indemnify and hold harmless the Client against all claims by third parties and liabilities towards third parties which arise from a violation of the aforementioned statutory provisions on the part of the Supplier or any subcontractor commissioned by the Supplier or any subcontractor engaged by the subcontractor.

## **27. Confidentiality; Advertising**

**27.1** "Confidential Information" within the meaning of these GTC shall be all written, oral, electronic, visual, or any other tangible or intangible communications, documents, disclosures, materials or other information of the Client, including but not limited to data, know-how, source codes, technical and non-technical information, materials, prototypes, samples, specifications, prices and other operational information, including any reproductions thereof, transmitted or otherwise made available to the Supplier in connection with the services, whether expressly marked "confidential" or "proprietary" or whether the Client's intention to keep such information confidential arises from the nature of the information or otherwise. Confidential Information of the Client shall furthermore be the data generated by the Supplier from the Confidential Information provided by the Client.

**27.2** The Supplier undertakes to treat all Confidential Information and knowledge provided to it by the Client or of which it becomes aware during the term of the respective cooperation as strictly confidential and to use it exclusively in connection with the performance of the services.

**27.3** The Supplier undertakes to disclose the Confidential Information to its employees as well as subcontractors or external consultants only if and to the extent that this is necessary for the performance of the services.

**27.4** The Supplier undertakes to impose a duty of confidentiality in accordance with the provisions of these GTC on those employees as well as subcontractors or external consultants who become aware of the Confidential Information due to their work and, to the extent permitted by law, also for the period after termination of their employment.

**27.5** In order to protect the Confidential Information, the Supplier is obliged to take all technically and organisationally necessary measures in accordance with the current state of the art, such as the restriction of access, access and access rights, the use of up-to-date encryption technology, etc., so that unauthorised persons do not gain access to the Confidential Information. In doing so, the Supplier shall protect the Confidential Information with at least the same care with which it protects its own business and trade secrets, but at least with the care of a prudent businessman.

**27.6** The confidentiality obligations under these GTC shall not apply if and to the extent that the information concerned:

- (i) was already lawfully known to the Supplier at the time of its transmission; or
- (ii) is or becomes publicly known without the Supplier's intervention; or
- (iii) is disclosed to the Supplier by a third party without an obligation of confidentiality; or
- (iv) have been developed by the Supplier independently and without recourse to any Confidential Information of the Client; or
- (v) have been expressly authorised in writing by the Client for use and disclosure.

Combinations of information or features shall not be deemed to be covered by the above exceptions merely because individual pieces of information or features are generally known or freely available to the public or are in the Supplier's lawful possession, unless the combination itself or its principle of operation meets one of the above exceptions.

In the context of a court or administrative order, disclosure is permitted only to the extent mandatorily ordered, and only provided that Supplier promptly notifies Client of such order and Supplier reasonably cooperates with Client to prevent disclosure, limit its scope, or obtain a protective order or other appropriate remedy.

To the extent that the Supplier relies on the existence of any of the foregoing exceptions, the Supplier shall provide appropriate evidence of its eligibility.

**27.7** Information provided within the scope of the cooperation shall remain the property of the Client. The Supplier may only make copies of information obtained to the extent necessary for the purpose of the cooperation under the respective Work Order.

**27.8.** After termination of the Work Order or at the written request of the Client, the Supplier undertakes, at the Client's discretion, to immediately return or, at the Client's discretion, to destroy all information physically transmitted by the Client within the scope of the services, such as documents, sketches or similar. Own records, compilations and evaluations containing Confidential Information shall be destroyed at the Client's request. Electronically transmitted and/or stored information shall be deleted accordingly. For the avoidance of doubt mandatory record retention obligations remain unaffected. In such a case, the further storage of the Confidential Information to be retained by the Supplier is only permissible for the purpose of fulfilling these obligations while maintaining all confidentiality obligations arising from this agreement.

**27.9** In the event of destruction and/or deletion of the Confidential Information, the Supplier shall

confirm the destruction and/or deletion in writing to the Client.

**27.10** The parties agree that neither the Work Order nor the actual transfer of the Confidential Information does constitute the granting of a licence or other permission for the Supplier to use or exploit the Confidential Information. Further rights and obligations than those set out in the Work Order shall not be established.

In particular, the disclosure of Confidential Information does not establish any rights to industrial property rights or copyrights for the supplier. The parties agree that the disclosure of Confidential Information does not establish any right of publication or right of prior use within the meaning of the Patent and Utility Model Act (*Patentgesetz*).

**27.11** The Client shall not assume any responsibility for the correctness and completeness of the information communicated.

**27.12** In the event of a culpable breach of the confidentiality obligation, the Supplier shall be obliged to pay a contractual penalty in an amount which shall be determined by the Client at its reasonable discretion (*billiges Ermessen*) and which may be reviewed by the competent court in the event of a dispute. The Client reserves the right to assert claims for damages in excess thereof. However, the contractual penalty paid shall be offset against this. Payment of the contractual penalty by the Supplier does not release him from compliance with the obligations regulated herein.

**27.13** The obligations arising from this clause – with the exception of the obligations to maintain data secrecy in accordance with the applicable data protection legislation and the general obligation to maintain trade secrets under the Trade Secrets Act (*Geschäftsgeheimnisgesetz*) or other corresponding applicable local statutory regulations for the protection of trade secrets to which the statutory regulations apply shall continue to apply beyond the end of the Work Order for a period of at least ten (10) years.

**27.14** The business relationship with the Client may only be referred to in the Supplier's advertising with the written consent of the Client.

## **28. Data protection**

**28.1** On the basis of the terms of reference, the Supplier is obliged to maintain the confidentiality of personal data in accordance with Art. 5 Para. 1 f, Art. 32 Para. 4 of the General Data Protection Regulation (GDPR), to which he may gain access or knowledge in the course of his activities. The Supplier is prohibited from processing personal data without authorisation. This obligation shall continue to exist even after termination of his activity.

**28.2** The Supplier is aware that breaches of confidentiality and data secrecy can be punished with imprisonment or a fine in accordance with Art. 83 para 4 GDPR, Sections 42, 43 German Federal Data Protection Act (*Bundesdatenschutzgesetz* (BDSG)) and other applicable provisions.

**28.3** The Supplier shall be obliged to oblige all employees and other vicarious agents employed by it in the performance of the services to observe data secrecy and confidentiality in accordance with the GDPR in writing. Evidence of this obligation must be provided to the Client immediately upon request.

**28.4** If required due to the task, the Supplier undertakes to conclude a order processing agreement in accordance with the requirements of the GDPR (Art. 28 GDPR) at the request of the Client.

**28.5** In the event of a culpable breach of the data protection obligation, the Supplier shall be obliged to pay a contractual penalty in an amount which shall be determined by the Client at its reasonable discretion (*billiges Ermessen*) and which may be reviewed by

the competent court in the event of a dispute. The Client reserves the right to assert claims for damages in excess thereof. However, the contractual penalty paid shall be offset against this. Payment of the contractual penalty by the Supplier does not release him from compliance with the obligations regulated herein.

## **29. Compliance**

Integrity and compliance are of essential importance for the Client. For the Client social responsibility in the context of entrepreneurial activities is from utmost importance. Therefore, the Supplier undertakes to take all necessary measures to avoid corruption and other punishable acts and to comply with the standards set out in the Code of Conduct of the Client upon conclusion of the respective order. The Supplier assures to oblige its employees and its subcontractors, which it uses in connection with the fulfilment of its contractual obligations towards the Client, to comply with the Code of Conduct. At the request of the Client, the Supplier shall provide evidence of the commitment of its employees and subcontractors.

## **30. Audit**

**30.1** The Client shall have the right to conduct audits at the Supplier's premises at any time with regard to compliance with the aforementioned compliance regulations, the confidentiality obligations and the data protection requirements or to have such audits conducted by an auditor to be named in the individual case. The Supplier shall have the right to convince itself of the Supplier's compliance with the aforementioned obligations in its business operations by means of spot checks, which must generally be notified in good time.

**30.2** The Supplier is obliged to cooperate to the best of its ability in this respect with the Client or the auditor appointed by the Client.

## **31. Place of Performance/Written Form/Place of jurisdiction/Applicable Law**

**31.1** The place of performance and jurisdiction is Gummersbach, Germany. However, the Client is also entitled to assert its claims at the Supplier's general place of jurisdiction.

**31.2** The law of the Federal Republic of Germany shall apply to the relationship between the parties to the exclusion of private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **32. Written form**

**32.1** This contract shall only be concluded in written form. With the exception of the provision in favour of the client under 3.1, this shall then be deemed to have been observed in text form, if (i) the parties have provided at least a simple (a non-advanced/non-qualified) electronic signature in accordance with the eIDAS Regulation, or (ii) the parties have signed the document either (a) by hand or (b) digitally (e.g. by inserting a digital signature) and have sent the document signed by hand or digitally to the other party at least by telecommunication, namely by fax, in copy, or as an attachment to an e-mail (e.g. scan of the document in '.tif', '.pdf' or a similar, legible file format) ('written form').

**32.2** Amendments and supplements to an agreement/contract and its annexes as well as its termination require the written form. This also applies to amending or removing the written form requirement.

## **33. Severability clause**

Should individual provisions of these GTC be invalid, become invalid or be unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by a provision which comes as close as possible to the legal and economic purpose of that provision.